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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,417	04/20/2004	Michael E. Bell	4480-65	2581
23117 7590 03/18/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
JUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,417

Applicant(s)

BELL, MICHAEL E.

Examiner

Cheryl Juska

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 17-19, 21-24 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 17-19, 21-24, and 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's response with claims filed December 7, 2007, has been entered. No actual amendments to the claims have been made. Claims 1-14, 16, 20, 25-27, and 32 have been cancelled. Thus, the pending claims are 15, 17-19, 21-24, and 28-31.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 15, 17-19, 21-24, and 28-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 60-206868 issued to Moryama in view of WO 99/40250 issued to Chen as set forth in section 5 of the last Office Action (Non-Final Rejection mailed 08/07/07).

Response to Arguments

4. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.
5. Applicant states that the last Office Action "contends that this disclosure [of Moryama] teaches the claimed steps" recited in independent claim 15 (Remarks, page 6, 4th paragraph). Then applicant asserts Moryama teaches a completely different process (Remarks, page 7, 1st paragraph). To the contrary, the examiner has not asserted that the Moryama disclosure teaches the steps of claim 15. In other words, claim 15 has not been rejected as being anticipated by

Moryama or even obvious over Moryama alone. Rather, claim 15 has been rejected under 103 over Moryama in view of the Chen reference. While Moryama does teach a slightly different process than that presently claimed, it has been asserted that said process is obvious over the prior art. See the rejection set forth in section 13 of the Non-Final Rejection mailed 03/22/06 and section 5 of the last Office Action.

6. Applicant traverses the prior art rejection by asserting Moryama fails to teach applicant's limitation of "heating the first material to a temperature enabling the first material to flow, but not completely melted" (Remarks, page 7, 2nd paragraph). In particular, applicant states, "Moryama consistently teaches 'melting' certain components and not melting the carpet fibers—which is different than the claimed invention requires" (Remarks, page 7, 2nd paragraph). The examiner respectfully disagrees that the two are different.

7. Note applicant's first material comprises the processed waste carpet containing calcium carbonate and thermoplastic materials (claim 15). However, said waste carpet also inherently includes at least some textile fibers from the pile and/or primary backing. Thus, applicant's first material is analogous to Moryama's processes waste carpet material 2 comprising (i) pile fibers 2b, (ii) fibers of base fabric or primary backing 2a, and (iii) resinous backing material 3 (e.g., thermoplastic material). Moryama's extruding process is performed at a temperature below the melting point of the carpet material 2 (i.e., pile fibers and primary backing fibers) but above the melting point of the backing material 3. As such, the backing material melts to enable the processed waste carpet or "first material" to flow, while the pile and primary backing fibers remain unmelted. In other words, Moryama's "first material" comprising carpet material 2 and

backing material 3 is “not completely melted” since the carpet material 2 remains in fibrous form. Therefore, applicant’s argument is found unpersuasive.

8. Applicant also argues that the Chen reference fails to overcome Moryama’s deficiencies (Remarks, page 8, 1st paragraph). This argument is unfounded since the Moryama reference is not deficient in the manner described by applicant. See preceding arguments.

9. Applicant argues that the cited prior art fails to teach or appreciate the reduced particle size range of 50% passing through a 100 mesh screen to 95% passing through a 325 mesh screen, which is critical to avoid foaming problems in the claimed process (Remarks, page 8, 2nd paragraph). While the claimed range is not explicitly taught by the prior art, Moryama teaches size reduction of the waste carpet and Chen teaches waste carpet particles in the range of 5-1000 microns. Since a 100 mesh screen correlates to a particle size of 150 microns and a 325 mesh screen correlates to a particle size of 45 microns, it would have been readily obvious to one skilled in the art to grind the waste carpet particles of Moryama to a particle size within the range taught by Chen. Additionally, it would have been obvious to one skilled in the art to optimize the particle size in order to obtain the desired uniformity and/or flow properties. Hence, applicant’s argument is found unpersuasive.

10. Lastly, applicant argues that the prior art fails to teach or appreciate the claimed viscosity range (Remarks, page 8, 3rd paragraph). In response, while the cited prior art fails to teach the claimed viscosity, the claims remain obvious over the prior art. In particular, the structural and chemical limitations of the claimed molten composite material are met by the cited prior art. As such, it is reasonable to presume that the present material has the same physical properties as the prior art material. Like materials cannot have mutually exclusive properties. In the alternative, it

would have been readily obvious to one of ordinary skill in the art to manipulate the molten composition in order to achieve the desired viscosity for extruding said composition into a carpet backing, so long as the temperature criteria of Moryama is maintained. Therefore, the above rejection stands.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794